(3)

CANCELLED

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

W.P. No. 971 of 1995

PETITIONER ... Ayub Khan, aged about 52 years,
son of Shri Jalil Khan,
resident of 27 Kholi Vikas Nagar,
Bilaspur, M.P.

Versus

RESPONDENTS ... 1 Municipal Corporation, Bilaspur
through the Commissioner, Municipal
Corporation, Bilaspur, M.P.

2 The Commissioner,
Municipal Corporation,
Bilaspur, M.P.

3 The State of Madhya Pradesh,
through the Principal Secretary,
Local Self Government Department,
Vallabh Bhawan, Bhopal, M.P.

(104) AFR

13.2.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 971 of 1995

Petitioner: Ayub Khan

Versus

Respondents: Municipal Corporation, Bilaspur & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri M. K. Beg, Advocate for the petitioner.

Shri A. S. Kachwaha, Advocate for the Respondents No.1 and 2.

Shri Pankaj Shrivastava, Panel lawyer for respondent No. 3.

ORAL ORDER

(13th February, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner was appointed as Physical Training Instructor (for short 'PTI') vide order dated 14.8.1986 (Annexure P/1) for a probationary period of two years. The petitioner after having completed his probation, remain continued in service.
2. On 21/30.4.1994 (Annexure P/3) the petitioner was issued a show cause notice under the provisions of Rules 49 and 52 of Madhya Pradesh Municipal Employees Recruitment and Conditions of Service Rules 1968 (for short 'the Rules 1968') read with Rule 14 of the M.P. Civil Services (Classification, Control and Appeal) Rules 1966 (for short 'the Rules, 1966'), as to why a departmental enquiry be not initiated against him for the charges contained in the charge sheet. Along with the show cause notice, charge sheet, articles of charges, list of witnesses and documents were supplied to the petitioner.

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3. The charge sheet contained four charges to the effect that, **firstly**, the petitioner was on duty from 1.12.1991 to 10.12.1991 and remained absent from 11.12.1991 to 31.12.1991, and he deliberately marked his presence in the attendance-register even for his absence period, as such he has committed misconduct under the provisions of Rule 3(1) of the Madhya Pradesh Civil Services (Conduct) Rules 1965 (for short 'the Rules, 1965'); **secondly**, the petitioner did not have the requisite matriculation pass qualification, with diploma in physical training, including science subject, at the time of his appointment, as such appointment of the petitioner was contrary to the provisions of Rule 11 of the Rules 1968; **thirdly**, the petitioner while working in Devki Nandan Girls Higher Secondary School, Bilaspur has paid a sum of Rs. 20,000/- to a contractor Shri Ashok Ghatge, without permission of the Chairman of the School Development Committee, when the petitioner was required to deposit the said money in the Apex Bank, Bilaspur. The conduct of the petitioner also comes within the purview of misconduct under the provisions of Rule 3(1) of the Rules 1965; and **fourthly**, the petitioner has caused admission of Shri Ramavtar Pandey S/o Shri Om Prakash Pandey, in the school, misusing his official position, which also comes within the purview of misconduct under the provisions of Rule 3(1) of the Rules 1965.

4. The enquiry officer was appointed. After holding the enquiry in detail, the enquiry officer submitted his report on 3rd June, 1994 (Annexure P/4), holding the Charges No. 1, 2 and 3 as proved, and charge No. 4 could not be proved, as it required detailed enquiry.

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5. The petitioner was given a show cause notice dated 3.6.1994 (Annexure P/5), along with enquiry report, as to why the petitioner be not punished with 'removal from service'. The petitioner failed to submit his reply to the show cause notice dated 3.6.1994.

6. The Administrator vide his order dated 23.7.1994 (Annexure P/6) agreed with the enquiry report and imposed the punishment of 'removal from service' upon the petitioner with immediate effect. The petitioner filed an statutory appeal (Annexure P/7) under section 60 (7) of Madhya Pradesh Municipal Corporation Act, 1956 to the State Government.

7. The State Government by its order dated 14th December, 1994 (Annexure P/8) dismissed the appeal holding that the petitioner was given opportunity to cross examine the witnesses and he did not cross-examine them. The appellate authority upheld the findings of the enquiry officer as well as the disciplinary authority and dismissed the appeal.

8. The petitioner has filed this petition under Article 226 of the Constitution of India, seeking a direction to quash the order dated 23/25.7.94 (Annexure P/6) and order dated 14.12.94 (Annexure P/8) passed by the Respondent No.3 on the ground that the petitioner was not given an opportunity of hearing as the witnesses were examined in his absence and the petitioner was not allowed to cross examine the witnesses. The petitioner has raised the ground of not providing opportunity to cross examine the witnesses, in the memo of appeal, for the first time. The petitioner did not raise the ground that the petitioner was not given an opportunity to examine the witnesses before the

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authorities below. The petitioner did not reply to the show cause notice with enquiry report given to him.

9. Shri A. S. Kachwaha, learned counsel appearing for the Respondents No. 1 and 2 and Shri Pankaj Shrivastava, learned counsel appearing for the Respondent No.3 submit, per contra, that the petitioner has been given full opportunity of hearing and the submission that the witnesses were not examined before him and he was not given opportunity to cross examine the witnesses has already been examined by the appellate authority and the appellate authority has come to the conclusion that the petitioner was given full opportunity to cross examine the witnesses and the petitioner himself did not cross examine the witnesses. Learned counsel further submits that in view of the facts that the enquiry report has been upheld by the disciplinary authority as well as by the appellate authority, this Court in exercise of its jurisdiction under Article 226/227 of the Constitution of India should not interfere and re-appreciate the evidence and come to a different conclusion which may also be one of probable conclusions.

10. The Supreme Court in **Govt. of T.N. and others Vs. S. Vel Raj** (1997) 2 S.C.C. 708 has held that 'the finding recorded by the Enquiry Officer and confirmed by the appellate authority were based upon the evidence led during the enquiry and it was not even contended that the said findings were perverse. It was, therefore, not open to the Tribunal to record contrary findings and hold that the charge against the respondent was not proved."

11. After having heard learned counsel for the parties and having perused the records appended to the petition as well as return, I am of the view that the submissions made by learned

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counsel for the petitioner can not be countenanced as the record clearly shows that the petitioner was given full opportunity in the enquiry and thereafter the petitioner had also full opportunity to present his case before the disciplinary authority as well as the appellate authority. The conclusions recorded by the disciplinary authority and approved by the appellate authority, are based on the cogent evidence and no perversity has either been pleaded or found, and as such it does not call for any interference.

12. For the reasons state above the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur